IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO: 5101 of 1995

Between:

C. Shankar S/o. Bhoomaiah
R/o. Godavarikhani, Karimnagar District.

..... PETITIONER

AND

1 The Industrial Tribunal-I,
"Chandra Vihar Buildings", 1st floor, M.J.Road, Hyderabad.
2 The General Manager, Area -I, Singareni Collories Company Ltd.,
Godavarikhani, Karimnagar Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 1st respondent and issue a writ, order or direction particularly one in the nature of writ of Certiorari and quash the Award passed by the 1st respondent in I.D.No.4/87, dated 4-5-1993 upholding the order of dismissal passed by the 2nd respondent, holding the same as illegal, unjust, contrary to law and perverse and grant him the relief of reinstatement into service, with continuity of service, full back-wages and all other attendant benefits in the interest of justice and fair-play.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.K.SRINIVASA MURTHY

The Court made the following:

HONOURABLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO.5101 OF 1995

ORDER:

Heard both sides.

2. The petitioner, who is a worker working with the respondent No.2 herein, files this writ petition *inter alia* seeking to assail the award passed by the first respondent herein in I.D.No.4 of 1987 dated 04.06.1993.

3. The case of the petitioner is that he was initially appointed as a Hauler Khalasi in the year 1976. However, in spite of such long service the respondents have passed the orders on 17.04.1983 removing him from service and therefore, at his instance a dispute was raised and the same was referred to the first respondent herein, which was taken up as I.D.No.4 of 1987. During the pendency of the proceedings before the first respondent, through the orders dated 11.07.1989 held a domestic enquiry, which, was vitiated for the reason that the petitioner had no opportunity to take part in the enquiry proceedings. Thereafter, the matter was taken up for hearing wherein the respondent No.2 Management had examined witnesses as L.Ws.1 to 3 and marked Exs.M-1 to M-9 and also Ex.W-1. The first respondent under the impugned orders held that the petitioner was given ample opportunity to defend his case in the domestic enquiry conducted on 16.01.1983, on that he was guilty of absenting himself unauthorisedly for more than ten days under Standing Order 16 (10).

4. The learned counsel appearing for the petitioner submits that having regard to the fact that the respondents have taken the step to remove him on the ground of absence, when the alleged domestic enquiry conducted by the respondent No.2-Management found to be vitiated, it is not open for the respondent No.1 to go into the same question again and give a finding rejecting the petitioner's request. Further even the evidence produced on behalf of the

respondent No.2-Management was not considered to justify the action against the petitioner. These contentions were sought to be repelled on behalf of the respondent.

5. Having considered the submissions and also on perusing the material, the only question that falls for consideration is:

"Whether the impugned order is in any way vitiated?"

6. There is no dispute regarding the fact that the petitioner is working as a Hauler Khalasi and ultimately on the ground of his absence during the period from 1982 to 17.04.1983, the order of removal was passed. Though the petitioner has come out with a reason that during that period he was not well and further he was also arrested by the police in a criminal case, which was ultimately ended in acquittal and therefore his absence is purely accidental and unintentional. These aspects have not been properly considered. There is also a preliminary domestic enquiry was found to be vitiated as per the order of the first respondent on 11.07.1989. Subsequently, the evidence had been produced by the second respondent to support the charge against the petitioner by examining five witnesses and also marking certain documents. However, an error apparent on the face of it that the first respondent without considering or appreciating the evidence on record, gave a finding that the petitioner himself is reasonable for such absence by once again going into the validity of the domestic enquiry.

7. There is absolutely no justification for not considering the evidence produced on behalf of the second respondent both oral and documentary to sustain the charge against the petitioner. No other reason also has been shown as to why the said evidence is totally excluded from consideration. Having held that the domestic enquiry is vitiated, it is not open to the first respondent to raise the said question again and need not be gone into once again. In view of the same, it requires re-consideration and fresh disposal on merits after taking into consideration the evidence, which was already on record.

8. The writ petition is accordingly allowed. The impugned award is set aside. The matter is remitted back to the first respondent to dispose of according to law after giving notice to both sides. It is also open for the petitioner to raise any other further pleas including under Section 11 A of the I.D. Act and also to produce any evidence, if he chooses so. The first respondent shall dispose of the matter within a period of three months from the date of receipt of a copy of this order. No order as to costs.

B.PRAKASH RAO, J

01st December, 2004

SKM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Wednesday day the 1st day of December, Two thousand and Four.

REGISTRAR

TO

1 The Industrial Tribunal-I,
"Chandra Vihar Buildings", 1st floor, M.J.Road, Hyderabad.
2 The General Manager, Area -I, Singareni Collories Company Ltd.,
Godavarikhani, Karimnagar Dist.

3 Two C.Cs. to G.P. for Labour, High Court Buildings,

High Court of A.P., Hyderabad (OUT)

4 Two C.D. Copies.